



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9947]

RIN 1545-BO90

Section 199A Rules for Cooperatives and Their Patrons; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to Treasury Decision 9947, published in the **Federal Register** on Tuesday, January 19, 2021. Treasury Decision 9947 contained final regulations under the qualified business income provisions of the Internal Revenue Code regarding the deduction for income attributable to domestic production activities of specified agricultural or horticultural cooperatives.

DATES: These corrections are effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and applicable after January 19, 2021.

FOR FURTHER INFORMATION CONTACT: Jason Deirmenjian at (202) 317-4470 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9947) subject to this correction are issued under sections 1381 through 1388 and section 199A(g) of the Internal Revenue Code.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.199A-7 is amended by:

- a. Revising the first sentence of paragraph (c)(1).
- b. Revising the second sentence of paragraph (c)(2) introductory text.
- c. Revising paragraphs (c)(2)(ii) and (iii).
- d. Revising the first sentence of paragraph (c)(3).
- e. Revising the first sentence of paragraph (d)(1).
- f. Revising the first sentence of paragraph (d)(3)(i).
- g. Redesignating paragraph (d)(3)(ii)(B)(i~~2~~) as paragraph (d)(3)(ii)(B)(2).

The revisions read as follows:

§1.199A-7 Section 199A(a) Rules for Cooperatives and their patrons.

* * * * *

(c) * * *

(1) * * * QBI means the net amount of qualified items of income, gain, deduction, and loss with respect to any trade or business as determined under the rules of section 199A(c)(3) and §1.199A-3(b). * * *

(2) * * * In situations where the patron receives distributions described in paragraph (c)(1) of this section, the Cooperative must determine whether those distributions include qualified items of income, gain, deduction, and loss as determined under rules of section 199A(c)(3) and §1.199A-3(b). * * *

* * * * *

(ii) The distributions are qualified items of income, gain, deduction, and loss as determined under rules of section 199A(c)(3) and §1.199A-3(b) at the Cooperative's trade or business level;

(iii) The distributions are not items from an SSTB as defined in section 199A(d)(2) at the Cooperative's trade or business level (except as permitted by the threshold rules in section 199A(d)(3) and §1.199A-5(a)(2)); and

* * * * *

(3) * * * In the case of a Cooperative that makes distributions described in paragraph (c)(1) of this section to a patron, the Cooperative must determine the amount of qualified items of income, gain, deduction, and loss as determined under the rules of section 199A(c)(3) and §1.199A-3(b) in those distributions. * * *

(d) * * *

(1) * * * This section provides guidance on the determination of SSTBs as defined in section 199A(d)(2) and §1.199A-5. * * *

* * * * *

(3) * * *

(i) * * * In the case of a Cooperative that makes distributions described in paragraph (c)(1) of this section to a patron, the Cooperative must determine the amount of qualified items of income, gain, deduction, and loss as determined under the rules of section 199A(c)(3) and §1.199A-3(b) with respect to SSTBs directly conducted by the Cooperative. * * *

* * * * *

Par. 3. Section 1.199A-8 is amended by:

- a. Adding a heading to paragraph (d)(1).
- b. Revising the first sentence of paragraph (d)(2)(i).
- c. Revising the fourth sentence of paragraph (d)(3).
- d. Revising the second sentence of paragraph (e)(3)(ii).

- e. Revising the second sentence of paragraph (e)(4)(ii).
- f. Revising the third sentence of paragraph (e)(6)(i).
- g. Revising the second through fourth and sixth sentences of paragraph (e)(6)(ii).
- h. Revising the second and fourth through sixth sentences of paragraph (e)(7)(i).
- i. Revising the first and second sentences of paragraph (e)(7)(ii).
- j. Revising the second and third sentences of paragraph (e)(8)(i).
- k. Revising the first through third sentences of paragraph (e)(8)(ii).
- l. Revising the first sentence of paragraph (f).

The revisions read as follows:

§1.199A–8 Deduction for income attributable to domestic production activities of specified agricultural or horticultural cooperatives.

* * * * *

(d) * * *

(1) *Permitted amount*— * * *

(2) * * *

(i) * * * A Specified Cooperative is permitted to pass through an amount equal to the portion of the Specified Cooperative's section 199A(g) deduction that is allowed with respect to the portion of the cooperative's QPAI that is attributable to the qualified payments the Specified Cooperative distributed to the patron during the taxable year and identified on the notice required in §1.199A–7(f)(3) on an attachment to or on the Form 1099–PATR, Taxable Distributions Received From Cooperatives (Form 1099–PATR), (or any successor form) issued by the Specified Cooperative to the patron, unless otherwise provided by the instructions to the Form 1099-PATR. * * *

* * * * *

(3) * * * The Specified Cooperative must report the amount of section 199A(g) deduction passed through to the patron on an attachment to or on the Form 1099–

PATR (or any successor form) issued by the Specified Cooperative to the patron, unless otherwise provided by the instructions to the Form 1099-PATR.

* * * * *

(e) * * *

(3) * * *

(ii) * * * C's QPAI and taxable income both equal \$1,000 (\$1,800-\$800). * * *

(4) * * *

(ii) * * * C's section 199A(g) deduction attributable to patronage sources is the same as the deduction calculated by the nonexempt Specified Cooperative in Example 3 in paragraph (e)(3) of this section.

* * * * *

(6) * * *

(i) * * * D pays \$300,000 for its patrons' corn at the time the grain was delivered in the form of per-unit retain allocations and its W-2 wages (as defined in §1.199A-11) for 2020 total \$300,000. * * *

(ii) * * * D's QPAI and taxable income is \$1,200,000. D's section 199A(g) deduction for its taxable year 2020 is \$108,000 (.09 x \$1,200,000). Because this amount is less than 50% of D's W-2 wages, the entire amount is allowed as a section 199A(g) deduction. * * * The section 199A(g) deduction of \$108,000 is applied to, and reduces, D's taxable income.

(7) * * *

(i) * * * D declares a patronage dividend for its 2020 taxable year of \$900,000, which it pays on March 15, 2021. * * * On March 15, 2021, Patron A receives a \$9,000 patronage dividend that is a qualified payment under paragraph (d)(2)(ii) of this section from D. In the notice that accompanies the patronage dividend, Patron A is designated a \$1,080 section 199A(g) deduction. Under paragraph (a) of this section, Patron A may

claim a \$1,080 section 199A(g) deduction for the taxable year ending December 31, 2021, subject to the limitations set forth under paragraph (d)(4) of this section. * * *

(ii) Under paragraph (d)(7) of this section, D is required to reduce its section 1382 deduction of \$1,200,000 by the \$108,000 section 199A(g) deduction passed through to patrons (whether D pays patronage dividends on book or Federal income tax net earnings). As a consequence, D is entitled to a section 1382 deduction for the taxable year ending December 31, 2020, in the amount of \$1,092,000 (\$1,200,000 - \$108,000) and to a section 199A(g) deduction in the amount of \$108,000 (\$1,200,000 x .09). * * *

(8) * * *

(i) * * * In 2020, D pays its patrons a \$400,000 (\$900,000 - \$500,000 already paid) patronage dividend in cash or a combination of cash and qualified written notices of allocation. Under paragraph (d)(7) of this section and section 1382, D is allowed a deduction of \$1,092,000 (\$1,200,000 – \$108,000 section 199A(g) deduction), whether patronage net earnings are distributed on book or Federal income tax net earnings.

(ii) The patrons will have received a gross amount of \$1,200,000 in qualified payments under paragraph (d)(2)(ii) of this section from Cooperative D (\$300,000 paid as per-unit retain allocations, \$500,000 paid during the taxable year as advances, and the additional \$400,000 paid as patronage dividends). If D passes through its entire section 199A(g) deduction to its patrons by providing the notice required by paragraph (d)(3) of this section, then the patrons will be allowed a \$108,000 section 199A(g) deduction, resulting in a net \$1,092,000 taxable distribution from D. Pursuant to paragraph (d)(8) of this section, any of the \$1,200,000 received by patrons that are Specified Cooperatives from D is not taken into account for purposes of calculating the patrons' section 199A(g) deduction. * * *

(f) * * * In the case described in section 199A(g)(5)(B), where a Specified Cooperative is a partner in a partnership, the partnership must separately identify and report on the Schedule K–1 of the Form 1065, U.S. Return of Partnership Income (or any successor form) issued to the Specified Cooperative partner the cooperative's share of gross receipts and related deductions, W-2 wages, and COGS, unless otherwise provided by the instructions to the Form. * * *

* * * * *

Par. 4. Section 1.199A-9 is amended by:

- a. Revising the first sentence of paragraph (c)(3)(ii).
- b. Redesignating paragraphs (j)(3)(i)(B)(1) introductory text and (j)(3)(i)(B)(1)(i) and (ii) as paragraphs (j)(3)(i)(B)(1) introductory text and (j)(3)(i)(B)(1)(i) and (ii).
- c. Revising newly redesignated paragraph (j)(3)(i)(B)(1)(ii).
- d. Redesignating paragraphs (j)(3)(i)(B)(2) introductory text and (j)(3)(i)(B)(2)(i) and (ii) as paragraphs (j)(3)(i)(B)(2) introductory text and (j)(3)(i)(B)(2)(i) and (ii).
- e. Redesignating paragraphs (j)(3)(i)(B)(3) introductory text and (j)(3)(i)(B)(3)(i) through (iii) as paragraphs (j)(3)(i)(B)(3) introductory text and (j)(3)(i)(B)(3)(i) through (iii).
- f. Redesignating paragraphs (j)(3)(i)(B)(4) introductory text and (j)(3)(i)(B)(4)(i) and (ii) as paragraphs (j)(3)(i)(B)(4) introductory text and (j)(3)(i)(B)(4)(i) and (ii).
- g. Redesignating paragraph (j)(3)(i)(B)(5) as paragraph (j)(3)(i)(B)(5).

The revisions read as follows:

§1.199A–9 Domestic production gross receipts.

* * * * *

(c) * * *

(3) * * *

(ii) * * * A Specified Cooperative's applicable gross receipts as provided in §1.199A-8(b) and/or (c) may be treated as non-DPGR if less than 10 percent of the Specified Cooperative's total gross receipts are DPGR. * * *

* * * * *

(j) * * *

(3) * * *

(i) * * *

(B) * * *

(1) * * *

(ii) The warranty is neither separately offered by the Specified Cooperative nor separately bargained for with customers (that is, a customer cannot purchase the agricultural or horticultural products without the warranty).

* * * * *

Par. 5. Section 1.199A-12 is amended by:

- a. Redesignating paragraphs (e)(i) and (ii) as paragraph (e)(1) and (2).
- b. Further redesignating newly redesignated paragraphs (e)(2)(A) and (B) as paragraphs (e)(2)(i) and (ii).
- c. Revising the last sentence of newly redesignated paragraph (e)(2)(ii).

The revision reads as follows:

§1.199A-12 Expanded affiliated groups.

* * * * *

(e) * * *

(2) * * *

(ii) * * * Accordingly, P is allocated \$1,080 ($\$1,350 \times \$16,000/\$20,000$) and S is allocated \$270 ($\$1,350 \times \$4,000/\$20,000$).

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